



The Ethics of Managing Client Expectations

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Perspectives

- The academics' view.
 - Managing client expectations v. zealous advocacy.
- The practitioners' view.
 - An accepted practice – but where does it cross the line?

LAW

Contexts

- Advertising.
- Initial consultation.
- Retainer agreements.
- Fees.
- Settlements.
- Malpractice suits / disciplinary complaints.

LAW

Advertising

Model Rule 7.1: "Communication Concerning a Lawyer's Services"

Comment 3: Even true statements about past achievements may be misleading if they create unjustified expectations.

LAW

"No perfect justice"

"The client understands that perfect justice cannot be achieved in any legal system, that even cases that appear strong can often be lost, and that sheer chance and the prejudices of judges and jurors affect the outcomes of trials."



LAW

"No promises"

"You understand that we make no promises or guarantees about the outcome of any matter." (from Counseling Clients in the Entertainment Industry 2005, 826 PLI/Pat 459 (form I))



LAW

Fees:

Initial communication

- Model Rule 1.5: Fees
 - (b) "The scope of the representation and the basis or rate of the fee and expenses... shall be communicated to the client.... Any change in the basis or rate of the fee or expenses shall also be communicated...."
- Special rules on contingency fees.



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A NEW MODEL?

- Recognizing the lawyer's role in shaping and managing client expectations.
 - Empirical research shows that the balance of power varies.
- Bringing the academic discourse in line with actual practice.
- Addressing what the lines should be.
- Concerns about the "hired gun, win at any costs" concept.

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The Rules

- No rule on managing client expectations.
- None proposed.
- Inherent in some rules?

LAW

Model Rule 1.4: Communication

A lawyer shall:

- "reasonably consult with the client about the means by which the client's objectives are to be accomplished"
- "keep the client reasonably informed"
- "explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation...."

LAW

Clients want lawyers to guide their expectations

*"Our experience will help you **manage** litigation risks. Risk management is about anticipation and planning for the future. Put simply, if you name the issue, the judge, and the opposing attorney, we'll tell you what to expect and when. Then, we'll outline your best options, so you can make informed, cost-effective decisions that keep your business on track."*

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Benefits to clients

- Provide perspective/distance
 - Broader view of possible goals/consequences.
- Consistent with attorney-client relationship
 - Attorney as friend.
 - Access to professional knowledge.

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Benefits to the legal system

- Efficiency when clients have better-informed expectations.
- Limitation on overzealous advocacy.
- Addressing unfavorable perception of attorneys.

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Paternalism

- Does the lawyer really know best what the client should want?
- Too far from the "zealous advocate" / "serve your client" model?
 - Model Rule 1.2: Scope of Representation: "[A] lawyer shall abide by a client's decisions concerning the objectives of representation."

How effectively can risks be assessed?

- Incommensurables -- *e.g.*, is trial worth the emotional cost?
- How well can a lawyer reasonably predict costs, risks, and outcomes?

Honesty

- Lawyers already do manage client expectations.
- Lawyers should manage client expectations.
- Lawyers should talk about where to draw the line.
